substantial and beneficial notice' "—citing also *Simpson* v. *Simpson*, 59 Mich. 71, 26 N. W. 285, and *Row* v. *Row*, 4 How. Prac. 133. The decision then goes on to criticise the rule in *McClanahan* v. *Hockman*, *supra*, and adds: "It is true, as a rule, a party once summoned in a cause is in court for all purposes; but in a cause for partition, as in a cause referred to a commissioner for account and report, many things are to be done in the case which are not done in open court and in which the parties interested should have notice that they may protect their interests in such proceedings. Parties in interest might be able to call to the attention of partition commissioners such facts and conditions as add materially to the value of particular portions of the real estate to be divided, or detract from such value, as the case may be—such facts and conditions as might not be discovered or noticed by the commissioners, who are entitled to have all the light possible in relation to the property partitioned, in order to enable them to make a fair and equitable partition. If parties interested have no notice of the action of the commissioners until the same is brought into court, they are placed at a great disadvantage, when they have nothing to guide them except the map and report, in making exceptions thereto, in case exceptions should be necessary, while if on the ground with the commissioners they could view the premises, and not only see just wherein the commissioners were at fault, but aid them in arriving at just conclusions."

On the other hand, the dissenting opinion argues (1) That the statute does not require notice; (2) If any notice be required, it will be a formal legal notice, which would require publication as to non-resident parties, and therefore would be inconvenient and costly; (3) The parties have been brought before court and must watch the proceedings therein. "The court simply employs the commissioners to view the land, instead of doing so itself, and they must attend, if they desire. Such a notice is neither original nor *mesne process.*" (4) The parties have their day in court when the case comes before it for approval or rejection. (5) As it is not a right given by law to make an argument before the commissioners, there is no office to be performed by the notice.

As may be seen by reference to the authorities cited in the opinion of the court (17 Am. & Eng. Encyc. Law (1st ed.) 769, 15 Encyc. Pl. & Pr. 827, and cases cited), the authorities generally differ on the necessity of notice by the commissioners to the parties in interest: the reasoning *pro* and *con* is set forth above. It may be an example of *quot homines, tot sententiae.* Certainly, the safe and discreet practice is always to give the notice. C. B. G.

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FINES—PENALTIES—JURISDICTION OF JUSTICES OF THE PEACE—WESTERN UNION TELEGRAPH CO. V. PETTYJOHN, 88 VA. 296—VA. CODE 1904, SECS. 712-745; 1294G (8); 1294H (6); 2939—CONS. 1902, SECS. 9, 134.—There exists, it is believed, some cloudiness in the minds of Virginia lawyers on the question of what constitutes a fine, and this results from the different senses in which the word is used in our written law. As used in sec. 7, art. VIII, Cons. 1869 (sec. 134, Cons. 1902), setting apart as a permanent literary fund "all *fines* collected for offences committed against the state," the term *fine* comprehends only those fines which are affixed as penalties for crime and are recoverable upon the conviction of the offender, and does not embrace those pecuniary penalties or

forfeitures, provided by statute, that a popular or *qui tam* action, which is a civil action, may be brought to recover. For example, the penalty provided in sec. 1220, Code 1887 (similar to sec. 1294g (8), Va. Code 1904), against express companies for excessive rates, etc., was held not to be a "fine collected for an offence against the state;" but the court seems to hold it such a fine as is contemplated by that provision of the Constitution prohibiting "excessive fines" (sec. 11, Art. 1, Cons. 1869; sec. 9, Cons. 1902); for it was held that the penalty of one hundred dollars was not excessive. *So. Erp. Co.* v. *Walker*, 92 Va. 59. As used in ch. 31, secs. 712-745, Va. Code 1904, providing for the recovery of fines, the word "fine" includes, by the express provision of sec. 745, pecuniary forfeiture, penalty, and amercement. But it has been decided that the provision of sec. 712, Va. Code 1904, that 'where a fine without corporal punishment is prescribed, the same may be recovered, if limited to an amount not exceeding twenty dollars, by warrant, and if not so limited, by action of debt, or action on the case, or by motion, and that the proceeding shall be in the name of the Commonwealth,' does not apply to penalties inflicted upon railroads under sec. 1262, Va. Code 1904, for failure to construct cattle guards. *Russell* v. *Louisville & N. R. Co.*, 93 Va. 322, 326. In other words, in spite of the provision of sec. 745 that the word "fine" in ch. 31 shall include pecuniary forfeitures, penalties and amercements, it does not include such penalties and amercements as go to individuals, and must be recovered by civil action; and the provisions of ch. 31 of the Code are not applicable to penalties or forfeitures going to individuals. *Western Union Tel. Co.* v. *Tyler*, 90 Va. 298.

Sec. 2939, Va. Code 1904, gives justices of the peace jurisdiction to recover fines not exceeding twenty dollars and other claims for money not exceeding one hundred dollars. In *Western Union Telegraph Co.* v. *Pettyjohn*, 88 Va. 296, it was held that under sec. 1292, Code 1887 (Va. Code 1904, sec. 1294h, cl. 6), the penalty imposed upon telegraph companies for failure to deliver a despatch, which is forfeited to the person sending the message or to whom it is addressed, is a *fine*, and therefore the justice does not have jurisdiction, as the amount claimed exceeds twenty dollars. As a result of these decisions, therefore, we have this anomalous state of affairs: the provisions of ch. 31 of the Code providing for the recovery of fines, do not include penalties forfeited to individuals, and one entitled to recover such a penalty must do so in his own name by a civil action, but when he brings his action, he cannot recover a penalty of over twenty dollars before a justice of the peace, because he is seeking to recover a fine. In other words, the provision of ch. 31, sec. 712, that fines not exceeding twenty dollars may be recovered by warrant, applies in all cases of penalties, whether they go to the state or not, to restrict the jurisdiction of the justice to cases where the penalty does not exceed twenty dollars, but the other provision of the same section that where a fine exceeds twenty dollars it may be recovered by action of debt, or action on the case, or by motion, applies only to penalties going to the state.

It seems clear that there is here either an irreconcilable conflict or an unnatural interpretation of the statutes in giving to the word "fine" two absolutely different meanings in the same statute. If in giving the justice jurisdiction to recover fines, which is done both by sec 712 and sec. 2939, the legislature meant to include under that term both penalties that go to the state and those in which

the state has no interest, there seems to be no reason why the same interpretation should not be adopted for the other provisions of sec. 712. But it is obvious from a reading of the whole of ch. 31, containing provisions in regard to official receipts for fines, commitment of the defendant until payment of the fine, issuing *capias pro fine*, etc., that the term is used to refer merely to those penalties in which the Commonwealth has an interest, and not to those given by statutes to individuals. What, then, is the correct interpretation of that term in sec. 712, and sec. 2939, defining the jurisdiction of the justice? Obviously, if the term fine there is used to include only penalties that go to the state, the justice has jurisdiction over all penalties that do not go in whole or in part to the state, not exceeding one hundred dollars. Now upon what principle of interpretation can one justify the claim that in the same section (712), the word is used in different senses? When sec. 2939 was enacted, giving the justice jurisdiction to recover fines, it was evidently the intention of the legislature to use that term with reference to chapter on the "Recovery of Fines," viz: ch. 31. Therefore, as in *Russell* v. *Louisville & N. R. Co.*, 93 Va. 322, 326, and *Western Union Tel. Co.* v. *Tyler*, 90 Va. 298, the Supreme Court of Appeals held that the provisions of that chapter had no reference to penalties for the non-performance of a duty prescribed, no part of which penalties can accrue to the state, is it not a necessary inference that the provision giving the justice jurisdiction to recover fines does not refer to such penalties, and therefore the case of *Western Union Tel. Co.* v. *Pettyjohn*, 88 Va. 296, is by implication overruled?

C. B. G.